
(2015) 03 RAJ CK 0065

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) Nos. 272, 295, 174 and 179/2015

Balram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 100

Citation : (2016) 1 CDR 21 : (2015) 4 RLW 2919

Hon'ble Judges : Sunil Ambwani, C.J.;Ajit Singh, J.

Bench : Division Bench

Advocate : Satish Khandelwal on behalf of Deendayal Khandelwal and Sandeep Taneja, for the Appellant; V.D. Gathala, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

1. We have heard learned counsels appearing for the parties.
2. These Special Appeals arise out of the judgment of learned Single Judge dated 05.02.2015, by which he decided and dismissed 17 writ petitions, against the demand of tax raised in pursuance to the clarification issued by the State Government on 24.07.2014. On the issuance of the notification, by the Additional Transport Commissioner (Tax), clarifying the notifications dated 09.03.2011 and 06.03.2013, to the effect that the exemption to the new Stage Carriage Passenger vehicles purchased after the date of notification i.e. 09.03.2011, and registered before 30.03.2013, and plying exclusively on Rural routes and other route (as classified under the provisions of the Rajasthan Motor Vehicles Rules, 1990), from the payment of special road tax payable under Section 4B of the Rajasthan Motor Vehicles Taxation Act, 1951, for a period of two years from the date of registration, will not be applicable to the State Carriages plying on the Inter-State routes.
3. By the notification dated 09.03.2011, a partial exemption was given to the Stage Carriages plying exclusively on Rural routes and other route (as classified

under the provisions of the Rajasthan Motor Vehicles Rules, 1990), in payment of tax. The State Government was of the view that so far as the Stage Carriages plying on Inter-State routes are concerned, the officers of the Transport Department do not have the uniform approach. It was clarified that the Inter-State routes cannot be included within the meaning of the words "other route", and thus, the exemptions given to the vehicles plying on the Inter-State routes, shall not be applicable, and accordingly, the tax should be imposed. Consequently, the demand of tax has been raised, for the period, the exemption was given. The Taxing Authority also imposed penalty on such demand under Section 6 of the Rajasthan Motor Vehicles Taxation Act, 1951.

4. It was submitted before learned Single Judge that the expression "Rural Routes" has been defined in the definition clause of the Rajasthan Motor Vehicles Rules, 1990, and that, though the "Other route" has not been defined in the definition clause, Explanation 1(4) to Rule 5.5, provides for the classification, which is the only classification provided under the Rajasthan Motor Vehicles Rules, 1990. The words "Rural route" and "Other route", as explained in Explanation 1 to Rule 5.5, are quoted as below:-

"Explanation 1. - For the purpose of this sub-rule the above classification of route shall have the following meaning:-

(1) Notified route shall means the route notified under section 100 of the Motor Vehicle Act, 1988.

(2) Non-Notified route shall mean a route which is not a notified route.

(3) Sub-Urban route and rural route shall means a route as defined in the Rajasthan Motor Vehicles Rules, 1990.

(4) Other route shall mean;

(i) a route which is not covered under a sub-urban route, rural route, route lying exclusively within the area of Municipality or U.I.T. or both.

(ii) the existing Stage carriage routes lying beyond the area of Municipality or U.I.T. or both at the time of commencement of the Rajasthan Motor Vehicles (IIInd Amendment) Rules, 2004 unless the Category is changed by the State Government."

5. Learned Single Judge has, after a detailed discussion, opined that the words "Other route", have been used, in the company of the words "Rural routes", taking into account the object and purpose of the exemption, would not include the Inter-State routes. The observation of learned Single Judge, with regard to the object and purpose of grant of exemption, which was wrongly given to the State Carriage plying on Inter-State routes is quoted as below:-

"In the context of aforesaid principles of interpretation of exemption notifications, more particularly with regard fiscal statutes the specific case of respondent State is to be seen. It is that exemption notifications dated 9-3-2011

and 6-3-2013 were for the purpose of incentivising the plying of new buses purchased during the prescribed period on the rural routes otherwise suffering poor quality transport service. In my considered opinion in the context of the object/purpose behind the two exemption notifications in issue, the petitioners' case of exemption notifications attracting to inter-state routes as "other routes" is not tenable as it is not conceivable that premium and lucrative routes would be clubbed together with the "lowly" rural routes from the point of view of profitability. The words "other routes" as defined in Explanation 4 to Rule 5.5(3) of the 1990 Rules are stated in the Rule itself to be confined to the operation of Rule 5.5 itself and cannot be construed to be a general classification under the 1990 Rules. The 1990 Rules define only rural route and sub-urban routes. A rural route specifically excludes municipality/UIT area of the district headquarter and even the tehsil headquarter, panchayat samiti headquarter, municipality, town sub division headquarter. A sub-urban route means any route which the state government in public interest declares as a route and which links district headquarter with the town, which has been developed into an important route by way of industrialisation or by way of organisation. In my considered opinion, in the event the interpretation of petitioners were to succeed, it would entail inclusion of premium and lucrative inter-state routes within the meaning of "other routes" to the exclusion of lesser lucrative sub-urban routes and even routes lying exclusively within the area of municipality or UIT or both. Such a construction of the words "other routes" for the purpose of exemption notifications in issue would be mechanical and quite plainly even absurd. I am of the considered view that one way or the other the petitioners have not been able to satisfy this court that words "other routes" in notifications dated 9-3-2011 and 6-3-2013 include the premium/lucrative inter-state routes, consequent to which buses running thereon and purchased during the prescribed period would be entitled to the benefit of exemption notifications dated 9-3-2011 and 6-3-2013."

6. Learned counsel appearing for the appellants submits that the notifications, giving exemptions, may be strictly construed, but where the words are absolutely clear and there is no ambiguity, and further, that the expressions have been defined in the Rules, a clarification cannot take away the benefit, which has been given by the exemption notifications. He submits that the Rural route, is defined in Rule 1.2(t), however, the "Other route" have not been defined. The expression "Other route", has its meaning in the bracketed words, namely, (as classified under the provisions of the Rajasthan Motor Vehicles Rules, 1990). The description of the "Other route", as classified under the provisions of the Rajasthan Motor Vehicles Rules, 1990, is found in Explanation 1(4) of Rule 5.5, and which includes a route, which is not covered under a sub-urban route, rural route, route lying exclusively within the area of Municipality or U.I.T. or both, and the existing Stage Carriage routes lying beyond the area of Municipality or U.I.T. or both, at the time of commencement of the Rajasthan Motor Vehicles (IIInd Amendment) Rules, 2004, unless the category is changed by the State Government. It is submitted, relying on the decision of the Supreme Court in *M/s. Gujarat State Fertilizers Co. Vs. Collector of Central Excise*, , that where there

clear expression is used in providing an exemption, no intendment can be found, as it has been observed in *Hansraj Gordhandas Vs. H.H. Dave*, Assistant Collector of Central Excise and Customs, Surat and Others, , that in a taxing statute, there is no room for any intendment, but regard must be had to the clear meaning of the words.

7. In the present case, we do not find that there was any clear meaning to the words, insofar as "Other route" are concerned. The words "Other route" are not defined, either in the Act, or the Rules. Rule 5.5 is applicable to the application for grant of permit, and for that purposes, the Explanation provides for the classification of the routes. The classification includes Notified route, Non-Notified route, Sub-Urban route, Rural route and Other route, which have been defined in the Rajasthan Motor Vehicles Rules, 1990. The "Other route" does not include Inter-State route, and that, it cannot be said that since the Inter-State route is not included in Explanation 1(4), the "Other route" will include Inter-State route, also.

8. In *Principles of Statutory Interpretation*, 13th Edition 2012, by Justice G.P. Singh, in the Chapter of "Strict Construction of Taxing Statutes", (d) Qualifications of the rule of strict construction, page 853, the learned Author has explained the Strict Construction of Taxing Statutes", as follows:-

".....But exemptions which lift the restriction of taxability imposed by an enactment, are taxing in nature and are subject to the rule of strict construction. Whatever approach may be adopted in case of a real ambiguity, it is clear that there is no justification for the view that if a word of exemption is not defined it must be given its widest meaning and the correct rule in construing words of exemption as in construing other words is to find out the sense of the words in their context by reading the statute as a whole and by bearing in mind the purposes of the statute and the consequences flowing from rival interpretations. Unusual nature of exemptions will not be generally accepted unless the language is clear and express, for example double deduction of the same expenditure in computation of taxable income cannot be readily allowed. If the literal reading of the exemption provision exposes it to challenge on the ground of being irrational or arbitrary, some qualification may have to be read consistent with the object of the provision....." The judgment of the Supreme Court in *M/s. Oxford University Press etc. Vs. Commissioner of Income Tax*, , is referred to on pages 896, 897 and 904.

9. In the present case, we entire agree with the reasonings adopted by learned Single Judge, that since the words "Other route" have not been defined, and may include all kinds of routes, the purposive interpretation mainly, which will be much closer to the object and purpose of grant of exemption, must be adopted. The object of giving exemption for a period of two years, to new vehicles on the Rural route and Other route, was to provide good quality service in rural areas, where ordinarily, poor quality services are provided. He has observed that the Inter-State routes are generally, premium and lucrative routes, and that, even if

there could be no intendment to the taxing statutes, since the expression "Other route" is vague and has not been defined under the Rules, considering the object, for which the exemption was given, the Inter-State routes could not be included in the expression "Other route".

10. We do not find substance in the contention of learned counsel appearing for the appellants that in the Rajasthan Motor Vehicles Rules, 1990, the expression "Other route" has been defined in Explanation 1 to Rule 5.5. Rule 5.5 relates to application for grant of permit, and for that purposes, certain classifications have been made, on the route classification, which has no correlation, or object with any exemption, which only provides for making of application for grant of permit of the routes, and in any case, we do not find that in Explanation 1(4), "Other route" will include Inter-State route.

11. It is not a case where the State Government wanted to give exemption to either of the routes, or any residuary routes. The words "Other route", for grant of exemption, come after "Rural routes", and must be read in the company of the words "Rural route". On the principles of ejusdem generis, the words, "Other Route", will not include the Inter-State route. It appears that the officers of the Transport Department granted exemptions to the Inter-State routes also, on which the subject clarification was issued, and that, exemption granted erroneously, to the Inter-State routes, was directed to be withdrawn.

12. We do not find substance in the submissions of learned counsel appearing for the appellants that learned Single Judge has carved out a new definition of premium and lucrative routes. Learned Single judge has in fact, in order to rationalize his reasoning, observed that clubbing of Inter-State routes with the Rural routes, for the purposes of grant of exemption, is to treat the premium or lucrative routes (Inter-State routes), with the Rural route, which will lead to absurdity, in grant of exemption.

13. In view of the aforesaid discussion, we do not find any error in the judgment of learned Single Judge, except for the fact that he should have interfered with the award of penalty in the demand raised against the petitioners. Section 6 of the Rajasthan Motor Vehicles Taxation Act, 1951 provides as follows:-

"6. Payment of penalty for default. - (1) Where the tax due in respect of a motor vehicle other than that referred to in sub-sections (3) and (4) is not paid within the period allowed, the defaulter shall be liable to pay in addition to the tax due, a penalty at such rate as may be prescribed by the State Government, by notification in the Official Gazette, which shall not exceed 5% per month of the amount of tax due for each month or part thereof from the date of expiry of the period allowed:

Provided that the amount of penalty shall in no case be more than double the amount of tax due. (2) If the owner or any person having possession or control of a motor vehicle has deposited the penalty in addition to the tax for such late payment, no other proceedings shall be taken or continued in respect of such

late payment.

(3) Where a transport vehicle, or a construction equipment vehicle, of other State, other than that referred to in sub-section (4), plies in Rajasthan without paying the tax leviable under this Act, the defaulter shall be liable to pay in addition to the tax, a penalty which shall not be less than four times of the amount of tax due.

(4) Where a transport vehicle of other State plies in Rajasthan on National Permit with valid authorisation certification but without paying full amount of tax leviable under this Act, the defaulter shall be liable to pay in addition to the tax due, a penalty which shall not be less than the amount of tax due."

14. We are of the view that the penalty, in the present case, would not fall in any of the sub-sections of Section 6, inasmuch as there was no default in the payment of tax. The Department itself was not clear about the grant of exemption, for which a clarification was issued on 24.07.2014. The Department itself did not raise any demand, until the clarification was issued. The requirement of payment of tax, in defence, by itself, would not be a ground to impose a penalty, for non-payment of the tax.

15. Where there is a doubt, or ambiguity, which has been subsequently clarified, and there was no intention, no mens rea is involved, which is a necessary ingredient for a penalty to be charged under a statute. A penalty for civil liability does not require the mens rea to be established, however, where the statutory provisions provide for penalty for any default, which was considered to be default, until a clarification was issued, and for which no demand was raised, the penalty cannot be levied.

16. For the aforesaid reasons, the Special Appeals are partly allowed, to the extent that the demand of penalty on the tax is set aside. For the remaining reliefs, we fully subscribe to the reasoning given by learned Single Judge.

17. A copy of this judgment will be placed in the connected files.